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Memorandum for conference with the...

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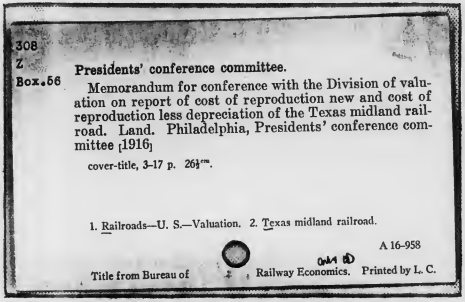

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Memorandum for conference with the Division of valuation on report of cost of reproduction new and cost of reproduction less depreciation of the Texas midland railroad. Land. Philadelphia, Presidents' conference committee [1916]

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MEMORANDUM

FOR CONFERENCE WITH THE

DIVISION OF VALUATION

ON

REPORT OF COST OF REPRODUCTION NEW

AND

COST OF REPRODUCTION LESS DEPRECIATION

OF THE

TEXAS MIDLAND RAILROAD

LAND

OFFICE OF
GENERAL SECRETARY
PRESIDENTS' CONFERENCE COMMITTEE
PHILADELPHIA, PA.

MEMORANDUM FOR CONFERENCE WITH THE DIVISION OF VALUATION ON REPORT OF COST OF REPRODUCTION NEW AND COST OF REPRODUCTION LESS DEPRECIATION OF THE TEXAS MIDLAND RAILROAD.

ACCOUNT No. 2, LAND FOR TRANSPORTATION PURPOSES; ALSO LAND OWNED BUT NOT USED FOR CARRIER PURPOSES.

A. WHAT THE REPORT PURPORTS TO SHOW CONCERNING LAND VALUE.

1. Topography, Geology and Climate.

"The country traversed by the Texas Midland Railroad consists of rolling hills, interspersed with small depressions, no streams of any consequence being encountered except north of Ennis, where the Trinity River is crossed, and south of Greenville, where the Caddo River is crossed.

"The soil on the hills is a sandy loam, while in the bottoms, a black waxy material is encountered, which by some people is called 'gumbo'. There are no outcroppings of rock and very little rock or hard material was encountered in the construction of the roadbed.

"The average altitude of the territory traversed by the Texas Midland is 560 feet above sea level.

"The winters are mild, snowfall being light, and the period of low temperature is of brief duration.

"The average rainfall, distributed throughout the year, is 28 inches.

"The country served is purely agricultural, no manufactories of any consequence being found in any of the towns."

2. The Director's Statement Compiled from Reports of the Land Section.

CARRIER LANDS.

The railroad uses for transportation purposes 1862.52 acres of land of the present value of $236,689.65, of the average value of $127.08 per acre.

These lands consist of 162.47 acres of urban lands of the present value of $113,226.90, of the average value of $696.91 per acre.

Rural lands, 1700.05 acres of the value of $123,462.75, of the average value of $72.62 per acre.

NON-CARRIER LANDS.

The company owns 75.87 acres of land which it does not use for carrier purposes. These lands are divided as follows:

Urban lands, 35.87 acres of the present value of $5979.40, averaging $166.70 per acre.

Rural lands, 40.00 acres of the present value of $2640, averaging $66 per acre.

Total, 75.87 acres of the present value of $8619.40, averaging $113.61 per acre.

VACATED STREETS, ETC.

The company occupies streets and alleys which have been vacated by municipal or other ordinance and the exclusive use given over to the carrier as follows:

Urban lands, 16.42 acres of the present value of $10,403.40, averaging $633.58 per acre.

DONATED LANDS.

Lands classed as donated are as follows:

Carrier lands, 492.62 acres of the value when donated of $25,510.25, averaging $51.79 per acre, of the present value of $62,667.38, averaging $127.21 per acre.

Non-carrier lands, 34.76 acres of the value when donation of $2701.80, averaging $77.73 per acre, of present value of $5386, averaging $154.95 per acre.

Total, 527.38 acres of the value at time of donation of $28,212.05, averaging $53.49 per acre; of present value of $68,053.38, averaging $129.04 per acre.

NOTE.—The statement does not disclose whether donated lands are urban lands or rural lands. It is said that "some difficulty was experienced in determining what lands had been donated, but the figures above given are substantially accurate."

(*a*) It is said:

"Where the consideration named in the deed was nominal and no evidence could be found to show payment of an actual consideration, it was assumed that the land had been donated."

(We are not advised what the facts are as to consideration for deeds above referred to. It is understood that, in many cases, carriers caused nominal considerations to be recited in deeds when compensation was paid. Where general practice so to do is shown it ought not to be assumed that the land was donated.)

(*b*) It is further said:

"Where an actual consideration was paid, but evidence showed that the payment had been made not by the railroad company but by other persons for the benefit of the company, this also was treated as a gift."

ORIGINAL COST OF LANDS.

The original cost of some of the lands is reported as follows:

Carrier lands, 1369.90 acres; original cost, $68,252.41; averaging $49.82 per acre. Present value, $174,022.27; averaging $127.03 per acre.

Non-carrier lands, 41.11 acres; original cost, $3665.50; averaging $89.16 per acre. Present value, $3233.40; averaging $78.65 per acre.

It is said that:

"The figures as to original cost cannot be accepted with confidence."

It is further said:

"The books of the carrier contained no information as to the amounts paid for those lands upon which the original 52 miles of railroad was constructed, and the records were extremely unsatisfactory as to the amounts involved in those pieces of line constructed by the Texas Midland Railroad itself. The total amount of information obtained from this source was small."

It follows that 1862.52 acres are used for carrier purposes, and 75.87 acres are not so used. The total lands owned are 1938.39. The total mileage shown by the engineer's summary is 110.549 miles of main, and 35.008 miles of other track. Dividing 1862.52 by 110.549 produces 16.85 acres on the average per mile of main track.

Original cost of 1369.90 acres is shown. The books contain no information as to 52 miles and records are extremely unsatisfactory as to the balance. Dividing the acres shown, 1369.90 by 110.549, mileage shown, less 52, or 58.549, produces an average of 23.40 acres per mile for which original cost is shown.

(*c*) "Present value"—how arrived at.

It is said:

"The present value of these lands was in all cases determined by applying to the units owned or used by the Texas Midland the market value of similar adjoining and adjacent lands. The present value so ascertained in all cases largely exceeded the original cost and it is the understanding of the Division of Valuation that the Supreme Court of the United States in the Minnesota Rate Case holds that in this event nothing is to be allowed on account of the expense of acquisition, severance damages, etc., etc."

NOTE.—Does the inventory contain any land used but not owned? Does the company use any land which it does not own?

(*d*) Unit value applied to each zone—meaning of.

"The report of our land section stated various zones, and the unit value applied to each zone means nothing unless it be read in connection with the maps, thereby fixing the location of the lands appraised. It is not feasible to circulate copies of these maps. The report of our land section, together with the maps, may be seen and examined at the office of the Valuation Attorney for the Western District in Kansas City."

Time has not permitted us to cause to be examined in detail the report of the land section, or the maps, or the data upon which such report is based.

B. AS TO METHODS EMPLOYED BY LAND SECTION OF THE DIVISION OF VALUATION.

1. Instructions and Forms Pertaining to Land Appraisals.

It is assumed that on the Texas Midland Railroad the land section of the Division of Valuation was guided by, and used the "INSTRUCTIONS AND FORMS PERTAINING TO LAND APPRAISALS" promulgated by the Supervisor of Land Appraisals and approved by the Director June 10, 1915. Concerning the same we make the following observations:

(*a*) As to Section I.

Attention is called only to the phrase, found in the Act, "present value." There is nothing in this section, and we think that these instructions contain nothing, calling attention to the other requirements of the Act concerning the ascertainment of the value of the lands of the carriers.

(*b*) As to Section II.

This section gives the purpose of the work directed to be done. It is said:

"To aid the Commission in arriving at said 'present value,' * * *."

Appraisers are required to find the value of certain similar land adjoining and adjacent to the above-mentioned classes of carrier lands. It is said that this "will constitute the base upon which they are to arrive at the primary or reflected value to be applied to each of the zones of the carriers' lands as hereinafter provided."

(It appears not to have been intended so to measure value of each zone.)

Appraisers were instructed to lay out zones of value, embracing in such zone so much of the land "as may fall under similar influences from adjoining lands of similar value."

It is said:

"To be similar in character within the meaning of this rule, the lands must be available for like uses," (Does this include shape, size, continuity, topography, geological conditions, etc.?) "and to be similar in location they must be subject to the same influences and conditions." (Does this mean fertility?)

NOTE.—The instructions require the same methods to be applied, and the same information to be gathered concerning non-carrier zones as concerning carrier zones. This makes it clear that the instructions were not intended to secure all the information as to carrier lands which is required by the Act. As to carrier lands the Act requires reproduction cost, original cost analyzed into its elements, and present cost of acquisition analyzed into its elements.

(*c*) As to Section III.

This section permits co-operation in laying out zones, and apparently forbids it in ascertaining information concerning value.

The owner's opinion of the value of his land is always received in evidence and taken into consideration.

(*d*) As to Section IV.

This section authorizes a re-zoning when necessary.

(*e*) As to Section V.

This section is as follows:

"To find the value of a zone, the present value of adjoining similar lands must be ascertained. (This does not mean that a right of way zone is not worth more than like area of land of different shape and therefore not suitable or available for the same or like uses as the railroad land.) This involves the collection of the following data as to adjoining lands and, to such extent as may be thought necessary, adjacent lands, viz.: Assessments, sales, and opinions as to value."

The value of adjoining similar lands properly may be ascertained as a step toward present cost of acquisition, and it usually involves the collection of data as to adjoining lands, such as assessments, sales, opinions, etc.

(*f*) As to Sections VI, VII, VIII and IX.

These sections describe the character of data to be considered.

(*g*) As to Section X.

This section is as follows:

"After having gathered and considered all the foregoing evidences of values, appraisers shall form an opinion of the unit value of each zone."

The phrase "unit value of each zone" means "the primary or reflected value" mentioned in Section II, and cannot be read to mean the value of the railroad land "in use and because of its use."

(*h*) As to Section XI.

This section relates to classification. Opportunity for examination of the data upon which the report of the land section is based, and the facts and circumstances bearing upon the propriety of the classification made, has not been sufficient to enable us to discuss the classification made by the report.

(*i*) As to forms.

No. 501 relates to designation of zones.

No. 502 is to be used by the appraisers for recording local opinions which they collect regarding the value of adjoining or adjacent similar lands.

No. 504 provides for a record of the sales of similar land.

No. 505 provides for the ascertainment of the assessment ratio.

No. 506 provides for additional data in the establishing of the assessment ratio.

C. THE REPORT OF THE LAND SECTION DOES NOT COMPLY WITH THE REQUIREMENTS OF THE ACT, BUT THE FIGURES REPORTED, IF WELL ESTABLISHED, MAY BE USED, IN CONNECTION WITH OTHER FACTS, INFORMATION, AND DATA, TO AID THE COMMISSION IN ASCERTAINING THE FACTS CONCERNING LAND WHICH THE LAW REQUIRES IT TO INVESTIGATE AND REPORT.

1. Contentions of the Representatives of the Carriers and of the States, respectively.

(*a*) May 15, 1915, Conference.

On May 15, 1915, at the conference between the Division of Valuation, members of State commissions and representatives of the Presidents' Conference Committee of the railroads, certain questions propounded by the Director were considered and discussed. Among these questions were the following:

"How shall the present 'value' of lands used for transportation purposes be determined?"

The carriers answered as follows:

"1. The 'present value' of each piece of land used for transportation purposes must be determined upon the same principles which govern in case of condemnation of private property for public use.

"2. In the case of right of way, station grounds and terminals, as in the case of other lands of considerable area, the value of the whole is greater than the sum of the values of the parcels comprising the same, because there are elements such as continuity, shape, etc., which must be taken into account and allowed for.

"3. The present cost of acquisition of an equally suitable strip or tract of land, in or through adjacent lands in that vicinity, is relevant to the determination of the present value of lands used for transportation purposes. In determining such present cost of acquisition, such substitute strip or tract is to be assumed to be in the same general physical condition as are the similar adjacent lands and owned and used as a part thereof for the general purposes of the community, and to be similarly improved by cultivation, planting and such structures thereon which are not of such a character and value as to make their acquisition and destruction so expensive that a cheaper location would be obtained if such were available, all things considered.

"4. In the determination of the 'present value' of lands used for transportation purposes, the same class of evidence and all facts and information upon which experts judge land values should be ascertained and taken into account, as, for example, knowledge of *bona-fide* sales of like or comparable lands in the vicinity, the market value for general—not including railroad—purposes of similar lands, the market value for all its available—including railroad—uses and purposes (230 U. S., 451, 452; 229 U. S., 53), and if the land has a peculiar value or special adaptation for railroad purposes that element is to be allowed for (230 U. S., 451; 98 U. S., 403; 147 U. S., 382; 229 U. S., 53).

"5. In determining value for railroad purposes the market value for general—not including railroad—purposes of similar lands in the vicinity shall be ascertained and may be properly adopted as the first step in the ascertainment of the present value of the rights of way and terminal lands.

"Following this is the ascertainment of what should be added to said market value to produce the cost of present acquisition. It is believed that the most practical way of determining this amount is to add to the value (for purposes other than that of a common carrier) of similar adjacent land a reasonable allowance to represent the other elements of value (including the expenses of acquisition) for which a carrier must pay in acquiring lands as shown by their experience. The actual experience of the carriers in acquiring lands in recent years will furnish a reasonable guide as to the amount that should be allowed for these elements and the expenses referred to.

"It is a fair assumption that 'present value' of rights of way and terminal lands, no matter when acquired, is not less than the actual cost of similar or comparatively similar rights of way and terminal lands recently acquired which is shown in the prices actually paid for such lands, including the severance and improvement damages. The carriers have accordingly commenced assembling information of their recent acquisitions, having in mind its use for the purpose stated.

"After cost of present acquisition has been determined there still remains to be added thereto to produce 'present value' the added value to the land itself, because of continuity, shape, etc., as defined in 2 *supra*." (Pages 15–16, Report of May 15, 1915, Conference.)

Representatives of the State commissions answered as follows:

"'Present value' (as used in paragraph 'second' of Section 19 (*a*) of the Valuation Act) of lands used for transportation purposes, should be determined from the value of similar adjacent land." (Page 22, Report of May 15, 1915, Conference.)

It will be observed that the States, by this answer, did not contend that "nothing is to be allowed on account of the expenses of acquisition, severance damages, etc., etc.," as said in the statement compiled from the report of the land section in this case.

Another question was as follows:

"Shall the cost of acquiring the right of way at the present time be determined and stated as part of the cost of reproduction new?"

The carriers answered as follows:

"Yes." (Page 16, Report of May 15, 1915, Conference.)

Representatives of the State commissions answered as follows:

"Yes." (Page 22, Report of May 15, 1915, Conference.)

Another question was as follows:

"The Act calls for 'the present cost of condemnation and damages in excess of present value of land.' What is the meaning of this phrase and how shall the information called for be arrived at?"

The carriers answered as follows:

"Land valuation matters are dealt with specifically in the second and third sections of the Act, which read:

"'Second.—(*a*) Such investigation and report shall state in detail and separately from improvements the original cost of all lands, rights of way and terminals owned or used for the purpose of a common carrier and ascertained as of the time of dedication to public use.

(*b*) and the present value of the same,

(*c*) and separately the original and present cost of condemnation, and damages or of purchase in excess of such original cost or present value.

"'Third.— Such investigation and report shall show separately the property held for purposes other than those of a common carrier, and the original cost and present value of the same, together with an analysis of the methods of valuation employed.'

"It is understood that the word 'improvements' in subdivision (*a*) refers to improvements placed upon the property by the carrier—upon this understanding, both subdivisions (*a*) and (*b*) are clear as to their meaning; subdivision (*c*), however, is somewhat ambiguous; it apparently requires a division of both original cost and present value into two items, one of which will be the land, the other the damages and expense of acquisition.

"It is believed that to only a very limited extent can such a division of original cost be made from the records of the carriers, which are the only possible source of information, therefore this requirement of the Act cannot be complied with generally." (Page 16, Report of May 15, 1915, Conference.)

Representatives of the State commissions answered as follows:

"Phrase means present reasonable and necessary costs as shown by existing local conditions. Information should be secured by investigation." (Page 22, Report of May 15, 1915, Conference.)

(*b*) Briefs.

(1) Carriers' Brief.

In the brief filed September 1, 1915, on behalf of the railroad companies represented by the Presidents' Conference Committee, at page 326 it is said:

"That the Valuation Act by paragraph 'first,' and also by paragraph 'second,' does require the Commission to ascertain and report the cost of reproduction of each piece of right of way and terminal lands.

"That paragraph 'second' requires the separate ascertainment of the elements involved in the cost of reproduction of lands, rights of way and terminals, in order that such elements may be compared with the corresponding elements included in total original cost, which is also by that paragraph required to be reported."

At pages 335–336 it is said:

"The Act further requires that as to each piece of property there shall be ascertained: (1) the present value thereof; (2) the present cost of condemnation, *i. e.*, the expense of the proceeding which the carrier would have to pay to acquire the land if it were now owned by some one else; (3) present damages, *i. e.*, the amount of damages to other property which would result from severance and the construction and operation of the railroad, if the land were now owned by some one else. As stated above, this is cost of reproduction new.

"Still further, the Act requires that there shall be ascertained the present cost of purchase, *i. e.*, the sum that it would now cost the carrier to purchase its right of way and terminal lands, if same were not owned by it.

"As a general rule, it will be presumed that a carrier in purchasing land does not pay more, and that the owner does not accept less, than the amount which would be by law required to be paid by the carrier, if condemnation proceedings had been resorted to, and it will be taken for granted that neither party did or—in case of present acquisition—would secure any advantage over the other.

"Having in mind the contention sometimes made, that the carrier is not entitled to the so-called 'unearned increment' of value which comes to land with the growth and development of the territory, and the purpose of the Act to require not only the ascertainment of the value of all property but also a great variety of evidence and data relating thereto, it is clear that the purpose of paragraph second is, as stated in the report of the Senate Committee having the bill in charge, to require the Commission to ascertain and report facts from which such increments can be ascertained.

"There is required such a detailed report of facts, as will enable value to be ascertained, in accordance with any answers which may be made to questions like these.

"Shall total original cost be taken as the measure of value? Or such cost less expenses? Or such cost less damages? Or such cost less expenses and damages?

"Shall present value be deemed to be what the carrier would now have to pay to acquire the land if owned and used in connection with similar adjacent land? Or such cost less condemnation expenses which would have to be paid? Or such cost less consequential damages which would have to be paid? Or such cost less expenses and damages which would have to be paid?

"Shall present value be arrived at by a combination of certain elements entering into total original cost, with other elements entering into estimated present cost?"

(2) National Association of Railroad Commissioners' Brief.

At page 41 it is said:

"In section 'second' of the Act, the Commission is required to ascertain and report separately from other property, the original cost of lands, right of way and terminals as of the time of their dedication to public use. It must ascertain the present value of the same separately from the original cost and present cost of condemnation, damages, etc. At the time of the passage of this Act, the Courts had not determined what elements would ultimately be considered in fixing fair value. In addition to ascertaining the original cost of the property, the reproduction new, reproduction less depreciation, Congress required the Commission to ascertain other values, if any, to ascertain the present value of right of way and terminal grounds, the original and present cost of condemnation and damages, or of purchase in excess of such original cost or present value."

At page 165 it is said:

"The Act requires the Commission to state separately the original and present cost of condemnation and damages or of purchase in excess of such original cost or present value. The carriers insist that the Commission must assume that all of the land must be condemned. (This is a mistake.) As a matter of fact a very small portion of land on a right of way is condemned because the carriers and the owner of the land cannot agree upon the price. In many instances condemnation proceedings are necessary because of the title of the land being in minors or incompetents who are incapable of conveying the same. These condemnations are usually friendly and excessive prices for land or damages are not exacted."

(3) California Brief.

At pages 91–93 it is said:

"1. Analysis of Requirement.

"The primary purpose of this paragraph is to secure for purposes of comparison and analysis the original cost and certain additional expenditures, where incurred, of the lands therein specified, as contrasted with the present value of the same, together with similar additions. The paragraph marked 'second' refers only to two methods

of acquisition of land, namely, condemnation and purchase. For the purpose of analysis, we shall first divide the lands referred to in this paragraph into two classes, namely (1), land originally acquired by condemnation, and (2), land originally acquired by purchase. With reference to these classes, we understand the requirements of the Act to be as follows:

"*a.* Land Originally Acquired by Condemnation.

"We understand that the Interstate Commerce Commission is directed to report with reference to this land as follows:

"(1) The original price paid for the land itself in the condemnation proceeding, plus the costs of the condemnation proceeding, plus the damages assessed for injury to land not taken or severance damages.

"(2) The present estimated price to be paid for the land itself if it were now condemned, plus the cost of condemnation which would now have to be paid, plus the damages for injury to land not taken or severance damages which would now have to be paid.

"*b.* Land Originally Acquired by Purchase.

"With reference to land originally acquired by purchase, we understand that the Interstate Commerce Commission is directed to report as follows:

"(1) The price originally paid, plus the expenses of the purchase, such as right-of-way agents' salaries and cost of recordation.

"(2) The estimated cost of purchasing the same property now, together with expenses, such as right-of-way agents' salaries and costs of recordation.

"We understand that the Interstate Commerce Commission is directed to report the present estimated cost of condemnation only in cases in which the land was originally condemned and the present cost of purchase only in cases in which the land was originally purchased. We find no requirement to the effect that the Interstate Commerce Commission must estimate the cost of condemnation of the land which was originally purchased or the cost of acquiring by purchase, through the usual methods, land which was originally acquired by condemnation.

"2. Original Cost.

"The term 'original cost' has already been defined. We understand the carriers to contend that the lands as to which the original cost is to be ascertained are more extensive as described in the paragraph of the Valuation Act marked 'second' than in the paragraph marked 'first.' We do not consider it necessary to go into this matter.

"3. Present Value.

"The paragraph marked 'second' clearly directs the Interstate Commerce Commission to ascertain and report, separately, 'the present value' of all lands, rights of way, and terminals owned or used for the purposes of a common carrier."

2. Report of Land Section is Incomplete.

There appears to be no denial in any of the briefs filed by State representatives that the Valuation Act requires the Commission to ascertain and report the cost of reproduction of the lands, rights of way and terminals of the carriers.

It is conceded that the Valuation Act does require the Commission to ascertain and report, not only present value, but also the present cost of condemnation, the present damages, the present cost of purchase and the present damages.

The Minnesota Rate Case, whatever it may be thought to hold as to land value, does not modify, amend or repeal the Valuation Act or any part of it. Congress has commanded the Commission to report certain facts; that decision has not relieved—and no Court can relieve—it of that duty. The specified facts concerning land values must be ascertained and reported.

These facts must be taken into consideration and given due weight by the Commission in reporting the final value of the property of the carriers.

The carriers are entitled to have the conclusions of the Commission as to final values tested by the facts which the law requires the Commission to find and report.

Under the terms of the Valuation Act there is no more justification for omitting from the report the present cost of acquisition than there would be for the omission of all the land itself from the inventories.

(*a*) Elements of value omitted by land section.

It is clear that the methods employed by the land section omit, among others, the following items of cost or expense which the carriers must pay:

Damages to the other property of the owner from whom the land is acquired;
cost of buildings and other improvements on the land acquired;
damages resulting to the property of others;
cost of removal and relocation of buildings and other structures not purchased;
payments for relinquishment of cattle passes and other rights;
taxes accrued and assumed at time of purchase;
ditches for waterways when a part of consideration;
abstracts;
appraisals;
arbitrators' fees in condemnation cases;
commissions paid;
right-of-way agent's compensation;
condemnation expenses, including Court costs (such as cost of surveys, maps, expert witnesses, jury fees, clerks' fees, etc.), and special counsel fees;
recording fees, and many other items of expense necessarily incurred.

(*b*) Figures reported by land section cannot be accepted as representing present value.

Among the reasons which may be mentioned why the figures contained in the report of the land section cannot be taken to represent present value are the following:

(1) The omission from consideration of all of the items for which carriers must pay which are above referred to.

(2) The value of similar adjoining or adjacent lands sought to be ascertained is arrived at (at least so far as the instructions and our present information indicates) by a consideration only of the present uses to which such adjoining and adjacent lands are devoted, and of uses for which there is a present need or demand.

In the valuation of carrier lands, the same must be considered to be available, fit and needed for railroad purposes, and consideration must be given to the value of the same not only for the uses to which they are presently put but also for all uses for which the same are available, fit and needed, or likely to be needed in the reasonably near future.

(3) The methods followed exclude from consideration all elements of value which have resulted from railroad uses, and from size, shape and continuity of the terminal and right-of-way lands of the company.

While in case of acquisition by condemnation or purchase, the owner is not entitled to any elements of value which result from the taking or which are produced by the railroad company, yet the same must be taken into account in ascertaining the final value of all the property of the carrier.

3. Work of Appraisal of Adjoining and Adjacent Land Insufficient.

Assuming that the instructions of June 10, 1915, fairly describe the kind of work which has been done, it seems that the scope of the inquiry was too narrow even for the determination of the present value of such adjoining and adjacent lands. It does not appear what consideration, if any, was given to the character of buildings and improvements, or to the rental value of the land, or to the prices at which the same are held and offered for sale in the community generally.

It is observed that Form No. 502, referred to in the Instructions of the Supervisor of Land Appraisals, does not provide for any description of the lands concerning which opinion is taken, and does not indicate the general extent of the same; it does not provide for any indication as to whether the opinion is taken concerning adjacent lands or concerning adjoining lands; it does not provide for any indication, and the instructions do not show whether the value concerning which opinion is taken is to include or exclude the value of fencing, ditching, tiling, building, or other improvements, crops, trees, or timber which may be on the land.

4. The Application of the Unit Values, or Unit Prices, of Adjoining or Adjacent Lands to the Right-of-Way and Terminal Lands of the Carrier Is Erroneous, and Will Not Produce Figures Representing Present Value.

FORMULA.

The ascertainment of value is not controlled by artificial rules. It is not a matter of formulas, but must be a reasonable judgment having its basis in a proper consideration of all relevant facts. (Minnesota Rate Cases.)

The following of the rules laid down in the Instructions of the Supervisor of Land Appraisals is quite certain to result in a mechanical process like the application of a formula.

Attention has been called to many elements of cost and value which the method followed by the land section excludes from consideration.

DAMAGED LAND.

Adjoining lands are frequently, indeed generally, parts of original tracts which were intersected by the line of railroad. These parts were damaged and relatively large amounts were recoverable on account of such damages. In so far as the value of adjoining lands, which were damaged by the taking of the right-of-way strip and by the construction and operation of the railroad, is used, the resulting figures are erroneous. Such figures may not safely be used even for the taking of the first step toward the ascertainment of present value, or present cost of acquisition.

EXPERIENCE IGNORED.

The experience of the carriers in the acquisition of right-of-way and terminal lands has not been given any consideration in arriving at the figures reported by the land section as the present value of the carrier lands.

The experience of the carriers will disclose the amount in excess of the naked-land value of similar lands which the carriers are legally bound to pay and are paying.

A large percentage of the total right-of-way mileage in this country has been acquired since 1900; in most cases it can be ascertained, with reasonable accuracy, what relation purchase price bore to the naked-land value of the tracts out of which the same was carved, and to the naked-land value of similar lands in the vicinity.

The carriers have already secured a considerable amount of information concerning the relations of purchase price to naked-land value, and are rapidly accumulating more. We have heretofore stated to the Commission, and to the Division of Valuation, that it is the wish of the carriers

that the valuation forces of the Government shall make use of this information. The carriers invite co-operation in the ascertainment of the data, and in the analysis and application of the same.

So many and so varied are the conditions under which carrier lands have recently been acquired that valuable precedents can be found by which to arrive at the proper relation to be applied to naked-land value to produce present cost of acquisition.

The work of the carriers discloses that the cost of recent acquisitions of rights of way is the best guide to the present cost of acquisition not only of the same rights of way but also of the rights of way of other lines which were acquired a long time ago.

D. CARRIERS URGE CO-OPERATION IN LAND VALUATION.

1. There should be co-operation in securing data for the application of the assessment method.
2. There should be co-operation in securing data for the application of the sales method.
3. There should be co-operation in the application of the opinion method.
4. No figures representing any of the elements of value to be ascertained should be arrived at *ex parte*.
5. Co-operation will make available, in the valuation of each carrier, the accumulated, analyzed and verified land-cost data derived from the recent experiences of other carriers in acquiring lands in similar territory and under like conditions.
6. Co-operation will save expense; it will avoid duplication of work; it will save time; it will tend to eliminate exceptions and protests, and the trial of issues arising thereon after tentative valuation.
7. Before the land section shall set down or recommend to the Division any figures in land valuation, representatives of the owner of the land should have an opportunity to submit and support its claims with reference thereto.

There is attached hereto, as Appendix "A," a statement illustrating information relative to the cost of land to carriers in the Western Group in recent years.

The experience of the carriers referred to is indicated by classes as follows:

1. Right of way for new lines acquired under favorable conditions of public sentiment.
2. Right of way for new lines acquired under unfavorable conditions of public sentiment.
3. Right of way for line changes.
4. Right of way for second main track.
5. Terminal lands.

The data above referred to is furnished to the Division as illustrations of the kind of information that is available for the use of the land section in ascertaining the facts concerning land costs and values which the Act requires the Commission to investigate and report.

The amounts actually paid by carriers to acquire right-of-way and terminal lands is good evidence—the best evidence—of the value of the same at time of acquisition.

If the value of similar lands in the vicinity has advanced since the acquisition of the right-of-way and terminal lands, it follows that the value of such carrier lands has also advanced.

As a general rule, any considerable stretch or area of recently acquired right-of-way or terminal lands was worth, at date of acquisition, at least the amount paid therefor. The value of the same on valuation date is no greater than a like stretch or area of carrier lands acquired before the development of the country at little or no cost to the carrier.

The carriers invite representatives of the Commission to examine and make use of the land-cost data which has been and which is being accumulated by the carriers. The carriers insist that it is erroneous and unjust to determine, or even tentatively report upon, the cost or value of right-of-way and terminal land without taking into consideration the recent experiences of the carriers in acquiring their land.

There are stronger reasons for giving weight to prices paid at recent sales to carriers for lands of suitable size, shape and topography for their purposes, than for consideration of the sales-price of tracts of different sizes, shapes and topography which are suitable for other and lower purposes.

The carriers urge that the prices paid at all normal sales should be considered and given such weight as they are entitled to receive, and they insist that prices paid at sales to railroad companies for carrier purposes, which have been wholly ignored by the land section, are entitled to great weight in the ascertainment of the facts which the law requires the Commission to ascertain and report.

Respectfully submitted,

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SANFORD ROBINSON,
PIERCE BUTLER.

APPENDIX A.

A STATEMENT SHOWING INFORMATION RELATIVE TO LAND-COST DATA REPORTS WHICH HAVE BEEN PREPARED IN WESTERN GROUP TERRITORY, IN ACCORDANCE WITH THE LAND CIRCULAR OF OCTOBER 30, 1914, AND TRANSMITTED TO THE WESTERN GROUP OFFICE.

A total of 97 reports have been received to date. These reports have been furnished by 19 different railroads and cover 97 different pieces of work in 21 States. 11 of these reports are on terminal property. The 86 reports outside of terminal property cover approximately 3642 miles, and an area of 66,771 acres.

90 of these reports which are available for a tentative statement, including one report from Eastern Group Territory and one from Southern Group Territory, furnish results as follows, it being understood that the purchase price as given does not in any case include the expense of acquisition.

(1) Right of way for new lines acquired under favorable conditions of public sentiment:

One thousand nine hundred and fifty-six miles of right of way or 32,152 acres purchased for $6,567,209 had a naked-land value of $2,654,614 or 40 per cent. of the purchase price. The expense of acquisition was $402,219 or 6.16 per cent. of $6,532,974, which was the purchase price of that part of this land for which the expense of acquisition is known and here included. The per cent. which naked-land value was of purchase price varied, by reports, from 16 to 94, omitting one report where the naked-land value was 110 per cent. of purchase price.

(2) Right of way for new lines acquired under unfavorable conditions of public sentiment:

Two hundred and forty-nine miles of right of way or 4262 acres purchased for $812,359, had a naked-land value of $155,218 or 19 per cent. of the purchase price. The expense of acquisition was $36,673 or 4.51 per cent. of the purchase price. The per cent. which naked-land value was of purchase price varied, by reports, from 12 to 39.

(3) Right of way for line changes:

Two hundred and five miles of right of way, or 3413 acres purchased for $655,081, had a naked-land value of $179,934 or 27 per cent. of the purchase price. The expense of acquisition was $29,767 or 5.66 per cent. of $526,221, which was the purchase price of that part of this land for which the expense of acquisition is known and here included The per cent. which naked-land value was of purchase price varied by reports from 12 to 42.

(4) Right of way for second main track:

Six hundred and twenty-one miles of right of way, or 4990 acres purchased for $1,497,301, had a naked-land value of $402,068 or 27 per cent. of the purchase price. The expense of acquisition was $60,240 or 4.03 per cent. of $1,493,952, which is the purchase price of that part of this land for which the expense of acquisition is known and here included. The per cent. which naked-land value was of purchase price varied, by reports, from 14 to 64.

The above four divisions summarize as follows:

Mileage, 3031; acres, 44,817; purchase price, $9,531,950; naked-land value, $3,391,834. Naked-land value, therefore, averages 35 per cent. of purchase price. The expense of acquisition was $528,899 or 5.65 per cent. of $9,365,506, which is the purchase price of that part of this land for which the expense of acquisition is known and here included.

APPENDIX A—Continued.

(5) Terminal Lands:

Eleven pieces of terminal property have been reported. Thirty-three million, four hundred and seventy-four thousand, five hundred and eighty-two square feet were purchased for $4,251,032. The naked land value was $1,891,335 or 44 per cent. of the purchase price. The expense of acquisition was $161,744 or 3.80 per cent. of the purchase price. The per cent. which naked-land value was of purchase price varied, by reports, from 22 to 79.

All of the above-given rural, town and terminal property may be summarized as follows:

Purchase price, $13,782,982. Naked-land value, $5,283,169 or 38 per cent. of the purchase price. Expense of acquisition $690,643 or 5.07 per cent. of $13,616,538, which was the purchase price of that part of this land for which expense of acquisition is known and here included.

In the determination of naked-land value as shown above, the assessment method was used in 63 instances, and the opinion method in 17. In six the results of the assessment and opinion methods were averaged, in two the results of the sales and opinion methods were averaged, in two the results of the assessment, opinion and sales methods were averaged. In six instances the result of the opinion method is furnished in support of the result of the assessment method, and in fourteen the results of the sales method are so furnished.

It is to be remembered that of the 90 reports, results of which are shown above, there are 15 which have not yet been analyzed, and hence the figures shown hereon may be somewhat changed.

It may be said that in addition to the 97 reports in hand there will shortly be made available a report on land acquired by the Kansas City Terminal Railway Company. This property was purchased for approximately $10,000,000.

A very considerable amount of data is known to be in a state of preparation by the Great Northern, Northwestern, Santa Fe, Kansas City Southern, Union Pacific System, Southern Pacific Company, Illinois Central, etc., and which is being sent in from time to time as reports are completed.

CHICAGO, ILL., May 8, 1916.
WESTERN GROUP OFFICE.

END OF
TITLE